

Informed Citizenry and Contempt

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The success or failure of any democratic system depends largely on the extent to which civil liberties are enjoyed by the citizens. Maximum development of an individual is the aim of a democracy by guaranteeing significant rights and freedoms to the maximum extent. In a popular democracy, people are supreme and all the three organs of the state (including judiciary) are to serve them. Consequently, service providers are accountable for their masters and masters have the right to check and criticize if they do not act or behave properly. Master's right to check, criticize and control may be effectively exercised through the right to freedom of speech and expression guaranteed under Article (19 (1)(a) of the Constitution of India. But, the access to information is the very foundation of this freedom of speech and expression. Unless, the access to information is provided, it will not be practicable to make effective exercise of freedom of speech and expression and in turn will check the criticize to control to service providers.

In a government of responsibility like ours, where all public authorities must be responsible for their conduct, there can be few secrets. The people of this country have right to know every public act, everything that is done in a public way by their public functionaries.¹ Founding fathers have entrusted greater responsibility in judiciary. It has been established as final interpreter of the Constitution as well as guardian of the Constitution. So, out of all the three organs of the state judiciary should be more responsive, accountable and transparent than the other two. In order to get information about the functions of the judiciary the press plays an important role.

FREEDOM OF PRESS

Democracy can thrive not only under the vigilant eye of its legislature, but also under the care and guidance of public opinion and the press is par excellence

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the vehicle through which opinion can become articulate. So, freedom of press is essential for political liberty. The purpose of the press is to advance public interest by publishing facts and opinions without which masters will not be able to have effective control over service providers. At the same time baseless, frivolous, unwanted facts and information may lower the dignity of the institution. So, the need is to make a balance between the freedom of press to publish facts and dignity of the judiciary. Articles (19)(2), 129,215 of the Constitution of India and the Contempt of Courts Act, 1971 provide for that balance.

Need of Balance Between Access to Information Etc. Versus Dignity of the Court

While making a balance between access to information, transparency & accountability on the one hand and dignity of the court on the other the sensible explanation made by Judge Jerome Frank is worth consideration:

"I am unable to conceive.....that, in a democracy, it can ever be unwise to acquaint the public with the truth about the working of any branch of government. It is wholly undemocratic to treat the public as children who are unable to accept the inescapable short comings of manmade institutions..... . The best way to bring about elimination of these short comings of our judicial system which are capable of being eliminated is to have all our citizens informed as to how that system now functions. It is a mistake, therefore, to try to establish and maintain, through ignorance, public esteem for our courts."²

Exposure of any wrongdoing in any public institution and action against the wrongdoing only enhances the prestige of that institution rather than lowering it. It shows that self-correcting mechanism exists. At the same time, an informed public criticism of misconduct and incompetence of institutional turpitude or dysfunctionality creates corrective public opinion through vigilant scrutiny and media publicity. Speech is duty and silence cowardice, since information, accountability and transparency of the organs of the State are inalienable attributes of any democratic institution. As early as in 1978, Krishna Iyer J., in his separate but concurring opinion in *Mulgaokar's*³ Case ruled the precedentially validated judicial norms related to contempt of court as:

"(1) The Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process; (2) The Court must harmonise the constitutional values of free criticism, and the need for a fearless curial process and its presiding functionary, the judge. To criticise a judge fairly albeit firecely, is no crime but a necessary right. Where freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; (3) The Court must avoid confusion between personal protection of a libeled judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt, but later is, although overlapping spaces abound; (4) The fourth functional canon is that the Fourth Estate should be given freen play within responsible limits even when the focus of its critical attention is the court, including the highest Court; (5) The fifth normative guideline for the Judges to observe is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate ulgar denunciation by dignified dearing and (6) The sixth sconsideration is that, if the Court considers the atack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond dondonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream."⁴

At the same time, the best shield and armour of a judge is his reputation of integrity, impartibility and learning. An upright judge will hardly ever neen to use the contempt power in his judicial career. The law of contempt of court can be made certain one it is occupied that the purpose of the contempt power is not to vindicate or uphold the majesty and dignity of the court (for its is automatically vindicated and upheld by the proper conduct of the judge, not by threats of using the contempt power) but only to enable the court to function.⁵

IV. BALANCE IN THEORY

Till 2006, the Contempt of Courts Act, 1971 was not in a satisfactory position. "Truth" could not be pleaded as a defence in contempt proceedngs in the Act. That is why, the National Commission to Review the Working of the Constitution recommended:

"A total embargo on truth as justification may be termed as an unreasonable restriction. It would, indeed, be ironical if, in spite of the emblems hanging prominently in the court halls, manifesting the motto "Satyameva Jayate", in the High Courts and "Yatho dharmas tatho jaya" in the Supreme Court, the courts could rule out the defence of justification by truth. The Commission is of the view that the law in this area requires an appropriate change."⁶

So, in order to accept 'truth' as a defence in contempt proceedings & thereby to introduce fairness in procedure and meet the requirements of Article 21 of the Constitution⁷, Section 13 of the Contempt of Courts Act, 1971 was amended in 2006. It now reads as:

"Notwithstanding anything contained in any law for the time being in force....
(b) the court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest & the request for invoking the said defence is bonafide."

V. BALANCE IN PRACTICE

In theory, an attempt has been made to create a balance between access to information etc. and dignity of the court through various Constitutional and statutory provisions. But even after insertion of 'truth' as a defence in 2006 in the Contempt of Courts Act, the Mid Day (a daily news paper published from Delhi) case, shows an impractical balance and glaring misuse of power to establish confidence of the public in judiciary.

From some time leading lawyers and the campaign for Judicial Accountability & Judicial reforms had been making two broad allegations against the former Chief Justice of India, Mr. Sabharwal. First, that his orders on sealing irregular commercial premises in residential areas in Delhi were ultimately to the benefit of two business associates of his sons who were engaged in developing commercial complexes & malls; because of the sealing drive, property values and rents went up in those areas. Second, that even as he heard the case relating to the tapes said to contain recorded conversations of the Samajwadi Party General Secretary Amar Singh and passed an interim order staying their broadcast, the Uttar Pradesh government allotted, his sons, plots of land in Noida at rates the was a fraction of

the market prices. Mr. Sabharwal after his retirement, noting that silence was no longer an option, rebutted these charges point by point in a newspaper article.

Even after Mr. Sabharwal showed that he was perfectly willing to defend himself in a public forum, the Delhi High Court took upon itself the task of defending his dignity and that of the Supreme Court. High Court initiated contempt proceeding against the editor, the publisher, the resident editor, and a cartoonist of Mid Day. In defence, justification by truth as a defence was pleaded & it was offered to prove allegations published.

In a shocking abuse of judicial power exercising vague & wondering jurisdiction with uncertain frontiers⁹ in contempt Cases, the Delhi High Court tried to establish confidence of the public in judiciary. The Court held the Mid-Day staff guilty of contempt without disputing the factual accuracy of their reports, only on the basis that such reports about a former Chief Justice functioning in his judicial capacity, where he was also sitting with other judges, brings the entire judiciary into disrepute & therefore amounts to contempt. The High Court in its judgement said:

".....the manner in which the entire incidence has been projected appears as if the Supreme Court permitted itself to be led into fulfilling an ulterior motive of one of its members. The nature of the revelations and the context in which they appear, though purporting to single out former Chief Justice of India, tarnishes the image of the Supreme Court. It tends to erode the confidence of the general public in the institution itself. The Supreme Court sits in divisions and every order is of a Bench. By imputing motive to its presiding member automatically sends a signal that the other members were dummies or were party to fulfill the ulterior design."¹⁰

VI. TROUBLING ISSUES

This conviction raised three troubling issues:

- (1) Absence of an effective, credible & transparent institutional mechanism to deal with allegations of misconduct made against judges of the superior courts.
- (2) An instance of improper use of the contempt power to bar any attempt to raise the issue of Judicial misconduct even at the threshold.

(3) Danger to freedom of expression that the judiciary's virtually untrammelled contempt jurisdiction poses.

The immediate reaction of conviction was request made by eminent academicians, lawyers, historians, members of Civil society & Press Club of India to Delhi High Court, to recall its order and an investigation to restore public confidence in the Judiciary. Seriousness of the anguish & frustration of the citizens of the country may be estimated by comment made by Senior Advocate Mr. Shanti Bhushan:

"If making these allegations publicly, even though true & supported by official documents, constitutes contempt of court, I am clearly guilty of the same & would like to invite appropriate action against myself".¹¹

A future revolution against the judicial system may be inferred from a suggestion made by journalists in this case. It was suggested that all major newspapers should publish the Mid-Day reports together to register their protest against the court order, to clear the intention that all are ready to face contempt proceedings.¹² We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely & with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness & objectivity of their approach, and by the restraint, dignity and decorum which they deserve in their judicial conduct.¹³

VII. CONCLUDING REMARKS

In a democratic setup, all institutions are open to bonafide critical evaluation of their functioning and such criticism in the public interest only strengthen the quality of their functioning. Public confidence in the Judiciary cannot be maintained by silencing dissenting voices or exposure of wrongdoing. Such exposure of all institutions, including the judiciary, is also essential in public interest for corrective action to be taken.

While it is important in any society that judiciary inspires public confidence, such confidence cannot be engendered by using the threat of contempt action to deter exposure of wrongdoing in the judiciary. One should remember the observation made by Supreme Court in Veeramsweri Case:

"The society's demand for honesty in a judge is exacting and absolute. The standards of judicial behaviour, both on and off the Bench, are normally extremely high. For a judge to deviate from such standards of honesty and impartiality is to some test is missing.

Reference

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4. Ibid.
5. Markandey Katju, "Contempt of Court: Need for a Second Look", *The Hindu* (Delhi), Jan. 22, 2007.
6. Point 7.4.1 of Chapter 7, 'The Judiciary', of 'The Report of the National Commission to Review the Working of the Constitution'. (Emphasis Supplied).
7. The Statement of Objects & Reasons to Bill amending Section 13 of the Contempt of Courts Act, 1971.
8. 'Shocking Abuse of Judicial Power', (Editorial), *The Hindu* (Delhi), Sept. 24, 2007.
9. Ibid.
10. Court on its Own Motion V. M.K. Tayal & Ors., Manu/De/8520/2007.